



March 31, 2015

ENGROSSED SENATE BILL No. 33

DIGEST OF SB 33 (Updated March 31, 2015 10:53 am - DI 96)

Citations Affected: IC 22-3; noncode.

Synopsis: Worker's compensation. Allows an officer of a corporation who is also an owner of any interest in the corporation to elect not to be an employee of the corporation under worker's compensation. Urges the legislative council to assign to an interim study committee for the 2015 interim period the topic of worker's compensation reimbursement to all providers of worker's compensation related claims outside of hospitals, including the study of a common baseline of the providers' Medicare reimbursement rate plus a reimbursement above the Medicare level, seeking fair reimbursement. Removes outdated language.

Effective: July 1, 2015.

Boots, Walker

(HOUSE SPONSORS — LEHMAN, OBER)

January 6, 2015, read first time and referred to Committee on Pensions & Labor.
January 22, 2015, amended, reported favorably — Do Pass.
January 26, 2015, read second time, ordered engrossed. Engrossed.
January 27, 2015, read third time, passed. Yeas 47, nays 3.

HOUSE ACTION

March 2, 2015, read first time and referred to Committee on Employment, Labor and Pensions.
March 31, 2015, amended, reported — Do Pass.

ES 33—LS 6150/DI 102



March 31, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 33

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-6-1, AS AMENDED BY P.L.99-2014,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the
4 context otherwise requires:
5 (a) "Employer" includes the state and any political subdivision, any
6 municipal corporation within the state, any individual or the legal
7 representative of a deceased individual, firm, association, limited
8 liability company, or corporation or the receiver or trustee of the same,
9 using the services of another for pay. A parent corporation and its
10 subsidiaries shall each be considered joint employers of the
11 corporation's, the parent's, or the subsidiaries' employees for purposes
12 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of
13 employees shall each be considered joint employers of the employees
14 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and
15 IC 22-3-3-31. If the employer is insured, the term includes the
16 employer's insurer so far as applicable. However, the inclusion of an

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1 employer's insurer within this definition does not allow an employer's
2 insurer to avoid payment for services rendered to an employee with the
3 approval of the employer. The term also includes an employer that
4 provides on-the-job training under the federal School to Work
5 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in
6 IC 22-3-2-2.5. The term does not include a nonprofit corporation that
7 is recognized as tax exempt under Section 501(c)(3) of the Internal
8 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the
9 corporation enters into an independent contractor agreement with a
10 person for the performance of youth coaching services on a part-time
11 basis.

12 (b) "Employee" means every person, including a minor, in the
13 service of another, under any contract of hire or apprenticeship, written
14 or implied, except one whose employment is both casual and not in the
15 usual course of the trade, business, occupation, or profession of the
16 employer.

17 (1) An executive officer elected or appointed and empowered in
18 accordance with the charter and bylaws of a corporation, other
19 than a municipal corporation or governmental subdivision or a
20 charitable, religious, educational, or other nonprofit corporation,
21 is an employee of the corporation under IC 22-3-2 through
22 IC 22-3-6. An officer of a corporation who is an employee of the
23 corporation under IC 22-3-2 through IC 22-3-6 may elect not to
24 be an employee of the corporation under IC 22-3-2 through
25 IC 22-3-6. **An officer of a corporation who is also an owner of**
26 **any interest in the corporation may elect not to be an**
27 **employee of the corporation under IC 22-3-2 through**
28 **IC 22-3-6.** If an officer makes this election, the officer must serve
29 written notice of the election on the corporation's insurance
30 carrier and the board. An officer of a corporation may not be
31 considered to be excluded as an employee under IC 22-3-2
32 through IC 22-3-6 until the notice is received by the insurance
33 carrier and the board.

34 (2) An executive officer of a municipal corporation or other
35 governmental subdivision or of a charitable, religious,
36 educational, or other nonprofit corporation may, notwithstanding
37 any other provision of IC 22-3-2 through IC 22-3-6, be brought
38 within the coverage of its insurance contract by the corporation by
39 specifically including the executive officer in the contract of
40 insurance. The election to bring the executive officer within the
41 coverage shall continue for the period the contract of insurance is
42 in effect, and during this period, the executive officers thus



brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship:

(A) is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain a certificate of exemption under IC 22-3-2-14.5; or

(B) is an independent contractor and does not make the election provided under this subdivision, the owner may obtain a certificate of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership:

(A) is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain a certificate of exemption under IC 22-3-2-14.5; or

(B) is an independent contractor and does not make the election provided under this subdivision, the partner may obtain a certificate of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers



- 1 stating that they are not to be treated as employees for tax
2 purposes.
- 3 (7) A person is an independent contractor and not an employee
4 under IC 22-3-2 through IC 22-3-6 if the person is an independent
5 contractor under the guidelines of the United States Internal
6 Revenue Service.
- 7 (8) An owner-operator that provides a motor vehicle and the
8 services of a driver under a written contract that is subject to
9 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier
10 is not an employee of the motor carrier for purposes of IC 22-3-2
11 through IC 22-3-6. The owner-operator may elect to be covered
12 and have the owner-operator's drivers covered under a worker's
13 compensation insurance policy or authorized self-insurance that
14 insures the motor carrier if the owner-operator pays the premiums
15 as requested by the motor carrier. An election by an
16 owner-operator under this subdivision does not terminate the
17 independent contractor status of the owner-operator for any
18 purpose other than the purpose of this subdivision.
- 19 (9) A member or manager in a limited liability company may elect
20 to include the member or manager as an employee under
21 IC 22-3-2 through IC 22-3-6 if the member or manager is actually
22 engaged in the limited liability company business. If a member or
23 manager makes this election, the member or manager must serve
24 upon the member's or manager's insurance carrier and upon the
25 board written notice of the election. A member or manager may
26 not be considered an employee under IC 22-3-2 through IC 22-3-6
27 until the notice has been received.
- 28 (10) An unpaid participant under the federal School to Work
29 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
30 extent set forth in IC 22-3-2-2.5.
- 31 (11) A person who enters into an independent contractor
32 agreement with a nonprofit corporation that is recognized as tax
33 exempt under Section 501(c)(3) of the Internal Revenue Code (as
34 defined in IC 6-3-1-11(a)) to perform youth coaching services on
35 a part-time basis is not an employee for purposes of IC 22-3-2
36 through IC 22-3-6.
- 37 (12) An individual who is not an employee of the state or a
38 political subdivision is considered to be a temporary employee of
39 the state for purposes of IC 22-3-2 through IC 22-3-6 while
40 serving as a member of a mobile support unit on duty for training,
41 an exercise, or a response, as set forth in IC 10-14-3-19(c)(2)(B).
- 42 (c) "Minor" means an individual who has not reached seventeen



(17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-33-3-35, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-37-2-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after



the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-37-2-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on ZIP code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by ZIP codes with the first



- 1 three (3) digits 463 and 464.
- 2 (2) The geographic service area served by ZIP codes with the first
- 3 three (3) digits 465 and 466.
- 4 (3) The geographic service area served by ZIP codes with the first
- 5 three (3) digits 467 and 468.
- 6 (4) The geographic service area served by ZIP codes with the first
- 7 three (3) digits 469 and 479.
- 8 (5) The geographic service area served by ZIP codes with the first
- 9 three (3) digits 460, 461 (except 46107), and 473.
- 10 (6) The geographic service area served by the 46107 ZIP code and
- 11 ZIP codes with the first three (3) digits 462.
- 12 (7) The geographic service area served by ZIP codes with the first
- 13 three (3) digits 470, 471, 472, 474, and 478.
- 14 (8) The geographic service area served by ZIP codes with the first
- 15 three (3) digits 475, 476, and 477.
- 16 (i) "Medical service provider" refers to a person or an entity that
- 17 provides services or products to an employee under IC 22-3-2 through
- 18 IC 22-3-6. Except as otherwise provided in IC 22-3-2 through
- 19 IC 22-3-6, the term includes a medical service facility.
- 20 (j) "Medical service facility" means any of the following that
- 21 provides a service or product under IC 22-3-2 through IC 22-3-6 and
- 22 uses the CMS 1450 (UB-04) form for Medicare reimbursement:
- 23 (1) A hospital (as defined in IC 16-18-2-179).
- 24 (2) A hospital based health facility (as defined in
- 25 IC 16-18-2-180).
- 26 (3) A medical center (as defined in IC 16-18-2-223.4).
- 27 The term does not include a professional corporation (as defined in
- 28 IC 23-1.5-1-10) comprised of health care professionals (as defined in
- 29 IC 23-1.5-1-8) formed to render professional services as set forth in
- 30 IC 23-1.5-2-3(a)(4) or a health care professional (as defined in
- 31 IC 23-1.5-1-8) who bills for a service or product provided under
- 32 IC 22-3-2 through IC 22-3-6 as an individual or a member of a group
- 33 practice or another medical service provider that uses the CMS 1500
- 34 form for Medicare reimbursement.
- 35 (k) "Pecuniary liability" means the responsibility of an employer or
- 36 the employer's insurance carrier for the payment of the charges for each
- 37 specific service or product for human medical treatment provided
- 38 under IC 22-3-2 through IC 22-3-6, as follows:
- 39 (1) This subdivision applies before July 1, 2014, to all medical
- 40 service providers, and after June 30, 2014, to a medical service
- 41 provider that is not a medical service facility. Payment of the
- 42 charges in a defined community, equal to or less than the charges



made by medical service providers at the eightieth percentile in the same community for like services or products.

(2) ~~This subdivision applies after June 30, 2014, to a medical service facility.~~ Payment of the charges in a reasonable amount, which is established by payment of one (1) of the following:

(A) The amount negotiated at any time between the medical service facility and any of the following, if an amount has been negotiated:

(i) The employer.

(ii) The employer's insurance carrier.

(iii) A billing review service on behalf of a person described in item (i) or (ii).

(iv) A direct provider network that has contracted with a person described in item (i) or (ii).

(B) Two hundred percent (200%) of the amount that would be paid to the medical service facility on the same date for the same service or product under the medical service facility's Medicare reimbursement rate, if an amount has not been negotiated as described in clause (A).

(l) "Service or product" or "services and products" refers to medical, hospital, surgical, or nursing service, treatment, and supplies provided under IC 22-3-2 through IC 22-3-6.

SECTION 2. IC 22-3-7-9, AS AMENDED BY P.L.99-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of sections 6 and 33 of this chapter. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of sections 6 and 33 of this chapter. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term does not include



a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes the employee's legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include the owner as an employee under this chapter if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship:

(A) is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain a certificate of exemption under section 34.5 of this chapter; or

(B) is an independent contractor and does not make the election provided under this subdivision, the owner may obtain a certificate of exemption under section 34.5 of this chapter.

(3) A partner in a partnership may elect to include the partner as an employee under this chapter if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership:

(A) is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain a certificate of exemption under section 34.5 of this chapter; or

(B) is an independent contractor and does not make the



- 1 election provided under this subdivision, the partner may
 2 obtain a certificate of exemption under section 34.5 of this
 3 chapter.
 4 (4) Real estate professionals are not employees under this chapter
 5 if:
 6 (A) they are licensed real estate agents;
 7 (B) substantially all their remuneration is directly related to
 8 sales volume and not the number of hours worked; and
 9 (C) they have written agreements with real estate brokers
 10 stating that they are not to be treated as employees for tax
 11 purposes.
 12 (5) A person is an independent contractor in the construction
 13 trades and not an employee under this chapter if the person is an
 14 independent contractor under the guidelines of the United States
 15 Internal Revenue Service.
 16 (6) An owner-operator that provides a motor vehicle and the
 17 services of a driver under a written contract that is subject to
 18 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor
 19 carrier is not an employee of the motor carrier for purposes of this
 20 chapter. The owner-operator may elect to be covered and have the
 21 owner-operator's drivers covered under a worker's compensation
 22 insurance policy or authorized self-insurance that insures the
 23 motor carrier if the owner-operator pays the premiums as
 24 requested by the motor carrier. An election by an owner-operator
 25 under this subdivision does not terminate the independent
 26 contractor status of the owner-operator for any purpose other than
 27 the purpose of this subdivision.
 28 (7) An unpaid participant under the federal School to Work
 29 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
 30 extent set forth under section 2.5 of this chapter.
 31 (8) A person who enters into an independent contractor agreement
 32 with a nonprofit corporation that is recognized as tax exempt
 33 under Section 501(c)(3) of the Internal Revenue Code (as defined
 34 in IC 6-3-1-11(a)) to perform youth coaching services on a
 35 part-time basis is not an employee for purposes of this chapter.
 36 (9) An officer of a corporation who is an employee of the
 37 corporation under this chapter may elect not to be an employee of
 38 the corporation under this chapter. **An officer of a corporation**
 39 **who is also an owner of any interest in the corporation may**
 40 **elect not to be an employee of the corporation under this**
 41 **chapter.** If an officer makes this election, the officer must serve
 42 written notice of the election on the corporation's insurance



1 carrier and the board. An officer of a corporation may not be
 2 considered to be excluded as an employee under this chapter until
 3 the notice is received by the insurance carrier and the board.

4 (10) An individual who is not an employee of the state or a
 5 political subdivision is considered to be a temporary employee of
 6 the state for purposes of this chapter while serving as a member
 7 of a mobile support unit on duty for training, an exercise, or a
 8 response, as set forth in IC 10-14-3-19(c)(2)(B).

9 (c) As used in this chapter, "minor" means an individual who has
 10 not reached seventeen (17) years of age. A minor employee shall be
 11 considered as being of full age for all purposes of this chapter.
 12 However, if the employee is a minor who, at the time of the last
 13 exposure, is employed, required, suffered, or permitted to work in
 14 violation of the child labor laws of this state, the amount of
 15 compensation and death benefits, as provided in this chapter, shall be
 16 double the amount which would otherwise be recoverable. The
 17 insurance carrier shall be liable on its policy for one-half (1/2) of the
 18 compensation or benefits that may be payable on account of the
 19 disability or death of the minor, and the employer shall be wholly liable
 20 for the other one-half (1/2) of the compensation or benefits. If the
 21 employee is a minor who is not less than sixteen (16) years of age and
 22 who has not reached seventeen (17) years of age, and who at the time
 23 of the last exposure is employed, suffered, or permitted to work at any
 24 occupation which is not prohibited by law, the provisions of this
 25 subsection prescribing double the amount otherwise recoverable do not
 26 apply. The rights and remedies granted to a minor under this chapter on
 27 account of disease shall exclude all rights and remedies of the minor,
 28 the minor's parents, the minor's personal representatives, dependents,
 29 or next of kin at common law, statutory or otherwise, on account of any
 30 disease.

31 (d) This chapter does not apply to casual laborers as defined in
 32 subsection (b), nor to farm or agricultural employees, nor to household
 33 employees, nor to railroad employees engaged in train service as
 34 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or
 35 foremen in charge of yard engines and helpers assigned thereto, nor to
 36 their employers with respect to these employees. Also, this chapter
 37 does not apply to employees or their employers with respect to
 38 employments in which the laws of the United States provide for
 39 compensation or liability for injury to the health, disability, or death by
 40 reason of diseases suffered by these employees.

41 (e) As used in this chapter, "disablement" means the event of
 42 becoming disabled from earning full wages at the work in which the



1 employee was engaged when last exposed to the hazards of the
2 occupational disease by the employer from whom the employee claims
3 compensation or equal wages in other suitable employment, and
4 "disability" means the state of being so incapacitated.

5 (f) For the purposes of this chapter, no compensation shall be
6 payable for or on account of any occupational diseases unless
7 disablement, as defined in subsection (e), occurs within two (2) years
8 after the last day of the last exposure to the hazards of the disease
9 except for the following:

10 (1) In all cases of occupational diseases caused by the inhalation
11 of silica dust or coal dust, no compensation shall be payable
12 unless disablement, as defined in subsection (e), occurs within
13 three (3) years after the last day of the last exposure to the hazards
14 of the disease.

15 (2) In all cases of occupational disease caused by the exposure to
16 radiation, no compensation shall be payable unless disablement,
17 as defined in subsection (e), occurs within two (2) years from the
18 date on which the employee had knowledge of the nature of the
19 employee's occupational disease or, by exercise of reasonable
20 diligence, should have known of the existence of such disease and
21 its causal relationship to the employee's employment.

22 (3) In all cases of occupational diseases caused by the inhalation
23 of asbestos dust, no compensation shall be payable unless
24 disablement, as defined in subsection (e), occurs within three (3)
25 years after the last day of the last exposure to the hazards of the
26 disease if the last day of the last exposure was before July 1, 1985.

27 (4) In all cases of occupational disease caused by the inhalation
28 of asbestos dust in which the last date of the last exposure occurs
29 on or after July 1, 1985, and before July 1, 1988, no compensation
30 shall be payable unless disablement, as defined in subsection (e),
31 occurs within twenty (20) years after the last day of the last
32 exposure.

33 (5) In all cases of occupational disease caused by the inhalation
34 of asbestos dust in which the last date of the last exposure occurs
35 on or after July 1, 1988, no compensation shall be payable unless
36 disablement (as defined in subsection (e)) occurs within
37 thirty-five (35) years after the last day of the last exposure.

38 (g) For the purposes of this chapter, no compensation shall be
39 payable for or on account of death resulting from any occupational
40 disease unless death occurs within two (2) years after the date of
41 disablement. However, this subsection does not bar compensation for
42 death:



(1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on ZIP code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by ZIP codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by ZIP codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by ZIP codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by ZIP codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by ZIP codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 ZIP code and ZIP codes with the first three (3) digits 462.

(7) The geographic service area served by ZIP codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by ZIP codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides services or products to an employee under this chapter. Except as otherwise provided in this chapter, the term includes a medical service facility.

(l) As used in this chapter, "medical service facility" means any of the following that provides a service or product under this chapter and uses the CMS 1450 (UB-04) form for Medicare reimbursement:



(1) A hospital (as defined in IC 16-18-2-179).

(2) A hospital based health facility (as defined in IC 16-18-2-180).

(3) A medical center (as defined in IC 16-18-2-223.4).

The term does not include a professional corporation (as defined in IC 23-1.5-1-10) comprised of health care professionals (as defined in IC 23-1.5-1-8) formed to render professional services as set forth in IC 23-1.5-2-3(a)(4) or a health care professional (as defined in IC 23-1.5-1-8) who bills for a service or product provided under this chapter as an individual or a member of a group practice or another medical service provider that uses the CMS 1500 form for Medicare reimbursement.

(m) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter as follows:

(1) This subdivision applies before July 1, 2014, to all medical service providers, and after June 30, 2014, to a medical service provider that is not a medical service facility. Payment of the charges in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

(2) ~~This subdivision applies after June 30, 2014, to a medical service facility.~~ Payment of the charges in a reasonable amount, which is established by payment of one (1) of the following:

(A) The amount negotiated at any time between the medical service facility and any of the following, if an amount has been negotiated:

(i) The employer.

(ii) The employer's insurance carrier.

(iii) A billing review service on behalf of a person described in item (i) or (ii).

(iv) A direct provider network that has contracted with a person described in item (i) or (ii).

(B) Two hundred percent (200%) of the amount that would be paid to the medical service facility on the same date for the same service or product under the medical service facility's Medicare reimbursement rate, if an amount has not been negotiated as described in clause (A).

(n) "Service or product" or "services and products" refers to medical, hospital, surgical, or nursing service, treatment, and supplies provided under this chapter.



1 SECTION 3. [EFFECTIVE JULY 1, 2015] (a) The general
2 assembly urges the legislative council to assign to the interim study
3 committee on employment and labor or another appropriate
4 interim study committee for the 2015 interim period the topic of
5 worker's compensation reimbursement to all providers of worker's
6 compensation related claims outside of hospitals, including the
7 study of a common baseline of the providers' Medicare
8 reimbursement rate plus a reimbursement above the Medicare
9 level, seeking fair reimbursement.

10 (b) If the topic described in subsection (a) is assigned to a study
11 committee, the study committee shall issue a final report to the
12 legislative council in an electronic format under IC 5-14-6 not later
13 than November 1, 2015.

14 (c) This SECTION expires December 31, 2015.



COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 33, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-3-3-5.2, AS AMENDED BY P.L.99-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5.2. (a) A billing review service shall adhere to the following requirements to determine the pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under worker's compensation provided before July 1, 2014, by all medical service providers, and after June 30, 2014, by a medical service provider that is not a medical service facility:

(1) The formation of a billing review standard, and any subsequent analysis or revision of the standard, must use data that is based on the medical service provider billing charges as submitted to the employer and the employer's insurance carrier from the same community. This subdivision does not apply when a unique or specialized service or product does not have sufficient comparative data to allow for a reasonable comparison.

(2) Data used to determine pecuniary liability must be compiled on or before June 30 and December 31 of each year.

(3) Billing review standards must be revised for prospective future payments of medical service provider bills to provide for payment of the charges at a rate not more than the charges made by eighty percent (80%) of the medical service providers during the prior six (6) months within the same community. The data used to perform the analysis and revision of the billing review standards may not be more than two (2) years old and must be periodically updated by a representative inflationary or deflationary factor. Reimbursement for these charges may not exceed the actual charge invoiced by the medical service provider.

(b) This subsection applies after June 30, 2014, to a medical service facility. The pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under worker's compensation and provided by a medical service facility is equal to a reasonable amount, which is established by payment of one (1) of the following:

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(1) The amount negotiated at any time between the medical service facility and any of the following:

(A) The employer.

(B) The employer's insurance carrier.

(C) A billing review service on behalf of a person described in clause (A) or (B).

(D) A direct provider network that has contracted with a person described in clause (A) or (B).

(2) Two hundred percent (200%) of the amount that would be paid to the medical service facility on the same date for the same service or product under the medical service facility's Medicare reimbursement rate, if an amount has not been negotiated as described in subdivision (1).

(c) This subsection applies to a medical service facility that is:

(1) an ambulatory outpatient surgical center (as defined in IC 16-18-2-14); and

(2) not reimbursed for an implant under subsection (b).

Payment for an implant furnished to an employee under IC 22-3-2 through IC 22-3-6 is equal to one hundred twenty-five percent (125%) of the implant's cost as evidenced by the invoice amount.

~~(c)~~ **(d)** A medical service provider may request an explanation from a billing review service if the medical service provider's bill has been reduced as a result of application of the eightieth percentile or of a Current Procedural Terminology (CPT) or Medicare coding change. The request must be made not later than sixty (60) days after receipt of the notice of the reduction. If a request is made, the billing review service must provide:

(1) the name of the billing review service used to make the reduction;

(2) the dollar amount of the reduction;

(3) the dollar amount of the service or product at the eightieth percentile; and

(4) in the case of a CPT or Medicare coding change, the basis upon which the change was made;

not later than thirty (30) days after the date of the request.

~~(d)~~ **(e)** If, after a hearing, the worker's compensation board finds that a billing review service used a billing review standard that did not comply with subsection (a)(1) through (a)(3), as applicable, in determining the pecuniary liability of an employer or an employer's insurance carrier for a medical service provider's charge for services or products covered under worker's compensation, the worker's compensation board may assess a civil penalty against the billing



review service in an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).".

Page 7, line 19, after "uses" insert "**or would be required to use**".

Page 13, line 39, after "uses" insert "**or would be required to use**".

Page 14, after line 41, begin a new paragraph and insert:

"SECTION 4. IC 22-3-7-17.2, AS AMENDED BY P.L.99-2014, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 17.2. (a) A billing review service shall adhere to the following requirements to determine the pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under this chapter provided before July 1, 2014, by all medical service providers, and after June 30, 2014, by a medical service provider that is not a medical service facility:

(1) The formation of a billing review standard, and any subsequent analysis or revision of the standard, must use data that is based on the medical service provider billing charges as submitted to the employer and the employer's insurance carrier from the same community. This subdivision does not apply when a unique or specialized service or product does not have sufficient comparative data to allow for a reasonable comparison.

(2) Data used to determine pecuniary liability must be compiled on or before June 30 and December 31 of each year.

(3) Billing review standards must be revised for prospective future payments of medical service provider bills to provide for payment of the charges at a rate not more than the charges made by eighty percent (80%) of the medical service providers during the prior six (6) months within the same community. The data used to perform the analysis and revision of the billing review standards may not be more than two (2) years old and must be periodically updated by a representative inflationary or deflationary factor. Reimbursement for these charges may not exceed the actual charge invoiced by the medical service provider.

(b) This subsection applies after June 30, 2014, to a medical service facility. The pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under this chapter and provided by a medical service facility is equal to a reasonable amount, which is established by payment of one (1) of the following:

(1) The amount negotiated at any time between the medical service facility and any of the following:

(A) The employer.



(B) The employer's insurance carrier.

(C) A billing review service on behalf of a person described in clause (A) or (B).

(D) A direct provider network that has contracted with a person described in clause (A) or (B).

(2) Two hundred percent (200%) of the amount that would be paid to the medical service facility on the same date for the same service or product under the medical service facility's Medicare reimbursement rate, if an amount has not been negotiated as described in subdivision (1).

(c) This subsection applies to a medical service facility that is:

(1) an ambulatory outpatient surgical center (as defined in IC 16-18-2-14); and

(2) not reimbursed for an implant under subsection (b).

Payment for an implant furnished to an employee under this chapter is equal to one hundred twenty-five percent (125%) of the implant's cost as evidenced by the invoice amount.

~~(c)~~ **(d)** A medical service provider may request an explanation from a billing review service if the medical service provider's bill has been reduced as a result of application of the eightieth percentile or of a Current Procedural Terminology (CPT) or Medicare coding change. The request must be made not later than sixty (60) days after receipt of the notice of the reduction. If a request is made, the billing review service must provide:

(1) the name of the billing review service used to make the reduction;

(2) the dollar amount of the reduction;

(3) the dollar amount of the medical service at the eightieth percentile; and

(4) in the case of a CPT or Medicare coding change, the basis upon which the change was made;

not later than thirty (30) days after the date of the request.

~~(d)~~ **(e)** If, after a hearing, the worker's compensation board finds that a billing review service used a billing review standard that did not comply with subsection (a)(1) through (a)(3), as applicable, in determining the pecuniary liability of an employer or an employer's insurance carrier for a medical service provider's charge for services or products covered under occupational disease compensation, the worker's compensation board may assess a civil penalty against the



billing review service in an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 33 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 33, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 16.

Delete page 2.

Page 3, delete lines 1 through 20.

Page 4, line 19, after "IC 22-3-6." insert **"An officer of a corporation who is also an owner of any interest in the corporation may elect not to be an employee of the corporation under IC 22-3-2 through IC 22-3-6."**

Page 9, line 13, delete "or would be required to use".

Page 9, delete lines 15 through 16.

Page 9, line 17, reset in roman "(1)".

Page 9, line 17, delete "(2)".

Page 9, line 18, reset in roman "(2)".

Page 9, line 18, delete "(3)".

Page 9, line 20, reset in roman "(3)".

Page 9, line 20, delete "(4)".

Page 9, line 39, strike "This subdivision applies after June 30, 2014, to a medical".

Page 9, line 40, strike "service facility".

Page 12, line 32, after "chapter." insert **"An officer of a corporation who is also an owner of any interest in the corporation may elect not to be an employee of the corporation under this chapter."**

Page 15, line 34, delete "or would be required to use".

Page 15, delete lines 36 through 37.



Page 15, line 38, reset in roman "(1)".
 Page 15, line 38, delete "(2)".
 Page 15, line 39, reset in roman "(2)".
 Page 15, line 39, delete "(3)".
 Page 15, line 41, reset in roman "(3)".
 Page 15, line 41, delete "(4)".
 Page 16, line 18, strike "This subdivision applies after June 30, 2014, to a medical".
 Page 16, line 19, strike "service facility".
 Page 16, delete lines 38 through 42.
 Delete page 17.
 Page 18, delete lines 1 through 31, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2015] (a) The general assembly urges the legislative council to assign to the interim study committee on employment and labor or another appropriate interim study committee for the 2015 interim period the topic of worker's compensation reimbursement to all providers of worker's compensation related claims outside of hospitals, including the study of a common baseline of the providers' Medicare reimbursement rate plus a reimbursement above the Medicare level, seeking fair reimbursement.

(b) If the topic described in subsection (a) is assigned to a study committee, the study committee shall issue a final report to the legislative council in an electronic format under IC 5-14-6 not later than November 1, 2015.

(c) This SECTION expires December 31, 2015."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 33 as printed January 23, 2015.)

GUTWEIN

Committee Vote: yeas 12, nays 0.

